IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.222 OF 1990.

Vibhavari Narhari Purohit
R/o. Barshi,
Dist: Solapur ..Appellant
(Original Plaintiff)

versus

1. Walchand Veerchand Gandhi (deleted)

2. Mahadeo Narayan Ganpule (dismissed)

3. Ramesh Waman Divate,
Res. of Kasbe,
Tal : Barshi.

4. Yeshwant Prasad Popular Education
Society, Barshi,
C.T.S.No.20,
Bhagwant Plot, it present
Seceretary A.R.Kulkarni,
c/o.Shah Darshi Jivan Model,
High School at Barshi,
District Solapur ..Respondents.
(Original Defendants)

Mrs. Suhasini Mutalik for the appellant

Mr. K.Y.Mandlik for the respondents

Coram : S.R.Sathe, J.
Dated : 23rd July, 2007

JUDGMENT:

1. Appellant, the original plaintiff in Regular Civil Suit No.239 of 1977 has preferred this appeal against the judgment and order passed by the Court of 4th Addl. District Judge, Solapur, whereby the order passed by the trial court dismissing the

plaintiff's suit for declaration and injunction was confirmed. For the sake of convenience, hereafter the parties shall be referred to as plaintiff and defendants.

2. Brief facts giving rise to this appeal are as under:

. Plaintiff was appointed as clerk in Yeshwant Prasad Popular Education Society, Barshi on 1.8.1969. She was confirmed in the said society on 1.5.1971 and accordingly letter was issued to her. It is plaintiff's case that as she was not carrying out the work as per the wishes of the defendant No.1 and was not co-operating him for his illegal deeds, her presence in the society found to be hurdle in defendant's activities, but as plaintiff was permanent servant, it was not possible for the defendant No.1 to remove her from service. He, therefore, prepared a false resignation purported to be dated 25.2.1975 and removed her from service on 1.6.1975. She, therefore, filed application before the Education Officer. The Deputy Director of Education, asked the society to take the plaintiff in service from 1.8.1976. Accordingly, defendants

issued notice to her and she joined the duty. However, on 30.4.1977 defendants issued notice and terminated her service by end of 31.5.1977. According to plaintiff said action of the defendants was illegal. Hence, on 24.5.1977 plaintiff filed suit for declaration that the alleged resignation dated 25.2.1975 is illegal and that she is serving on permanent post since 1.5.1971 and she continues to be in service. She also prayed for permanent injunction restraining defendant from obstructing her in serving defendant's school.

3. The defendant No.1, Secretary of Yeshwant Prasad Popular Education Society filed his written statement and opposed the plaintiff's claim. He contended that in view of the provisions of Rule 77-10 of Secondary School Code, Civil Court has no jurisdiction to try the present suit. Besides this, he also contended that the defendant has voluntarily submitted her resignation and the same is accepted and she has been actually relieved from service by the end of 31.5.1975 and as such plaintiff is not entitled for any declaration. He, further contended that as the Deputy Director of Education asked the defendants to accommodate plaintiff temporarily,

they accommodated her from 1.8.1976, but she was not appointed on the permanent basis nor it was held that her earlier service continued by virtue of fresh appointment. He, therefore, submitted that plaintiffs suit be dismissed.

4. The other defendants also adopted the written statement filed by defendant No.1.

5. Subsequent to this suit, the plaintiff filed another suit for injunction and recovery of her salary.

6. On the pleading of the parties, the trial court framed issues. In order to prove her case, plaintiff examined herself at Exhibit 67 and another witness by name Shashikala Vaidya Exhibit 128. As against this, on behalf of the defendants R.G.Patil, Dy. Director of Education was examined at Exhibit 129 and defendant No.1 at Exhibit 143. Both the parties produced certain documents.

7. After considering the evidence adduced by both the parties, the learned trial judge came to the conclusion that the plaintiff has failed to

prove that resignation dated 25.2.1975 is forged. He also held that plaintiff was not appointed as permanent servant from 1.8.1976. Naturally, he dismissed the plaintiff's suit.

8. Being aggrieved by the said order, the plaintiff filed Civil appeal No.195 of 1985 in the District Court, Solapur. It seems that being aggrieved by the order passed in the other suit, whereby the defendants were directed to pay salary for particular period, the society also filed Civil Appeal No.292 of 1984. Both the appeals were heard together and the 4th Additional District Judge, Solapur, confirmed the order of dismissal of plaintiff's suit bearing No.239 of 1977. The said order is challenged by the original plaintiff in the present second appeal.

9. From the perusal of the record it appears that while admitting the appeal, this court (Coram M.L.Dudhat, J.) has passed the following order:

> "Admit. Ground Nos.n, o, p, Substantial Questions of Law"

The said grounds are as under :

n) Whether the lower courts ought to have framed the issues of "Whether the plaintiff proves that the letter dated 30.4.77 is tainted with malafide and the action of the termination of the plaintiff on the basis of this letter is arbitrary, unreasonable and capricious and passed without following the procedure established by law and also against the principles of natural justice."

o) Whether the courts ought to have framed the issues, namely, "Whether the service of plaintiff is temporary or permanent and further whether the reinstatement of the plaintiff under the orders of the Dy. Director of Education with effect from 1.8.76 amounts to continuation of the service of the plaintiff.

p) Whether the lower courts ought to have issued of "Whether the notice of termination dated 30.4.77 is legal and proper and according to procedure established by law in respect of employees who has become permanent in the service of respondents.

10. In this appeal before me Mrs. Mutalik, learned Advocate for the plaintiff has urged only two points. Firstly, she submitted that both the courts below have not properly appreciated the evidence on record and have wrongly held that plaintiff has failed to prove that the resignation dated 25.2.1975 is forged. Secondly, she canvassed

before me that the learned First Appellate Court, ought to have considered the fact that after plaintiff joined services she was getting salary which she was getting at the time of termination and as such, Courts ought to have said that her service was continued. The learned advocate therefore submitted that the appeal be allowed and the plaintiff's suit be decreed.

11. As against this, Shri Mandalik, learned Advocate for the defendants submitted that the present appeal had in fact become infructuous because according to him in the Second Appeal which was preferred against the order passed in the Appeal No.298 of 1984, this Court (Coram D.R.Dhanuka, J.) directed the defendant society to make payment of Rs.46,930.65p pertaining to the period for which the plaintiff served in the society, and accordingly the said amount has been paid by the society to the plaintiff. He further submitted that at that time the plaintiff had not pressed her relief for reinstatement as she got service at Pune, after her marriage. So, now the present appeal has in fact become infructuous. He, therefore, submitted that the appeal be dismissed. According to him, on

merits also the same is liable to be dismissed.

12. It is not in dispute that plaintiff was initially appointed in defendant No.1 society on 1.8.1969 and she was confirmed on the post of clerk on 1.5.1971. It is defendants case that she submitted resignation on 25.2.1975. While, the case of the plaintiff is that the said resignation is forged one. According to her the defendant society was not giving salary to its employees as per the rules. Though salary was paid by cheque, while handing over the cheque, the defendant No.1 used to collect cash from the employees. As she refused to do so, and particularly, after her marriage her husband refused to do so, the dispute arose between the defendant No.1 and her and hence with a view to remove her from the service, the defendant No.1 prepared this false resignation. According to her, when she became permanent, the defendant No.1 had obtained her signature on a blank paper. It is her case that in case of every permanent servant the defendant No.1 used to obtain such signature and in fact some of the employees had even made complaint about the same to the society and the concerned department. Thereafter, the societies record was

also attached and enquiry was also held, but nothing was found. No blank signed papers were found. So her deposition that her signature was obtained on blank paper is not proved.

13. The plaintiff has examined one witness Shashikala Vaidya, Exhibit 128. She has stated that on 30.5.1975 plaintiff had given leave application to her and sought leave from 31.5.1975 to June. She has also stated that it was the practice of defendant No.1 to obtain the signature on blank paper at the time of confirmation of the employee. However, it has come on record that this witness was terminated by the society as a result of departmental enquiry in which her misconduct was proved. Thus, it is crystal clear that this witness had an axe to grind against the defendant society. So her testimony cannot be accepted.

14. It must be noted that if really the defendant No.1 had obtained signature of plaintiff on blank paper, then atleast at the time when dispute between the plaintiff and defendant No.1 started, she would have immediately made a complaint that her signature is obtained by defendant No.1 on

a blank paper. But admittedly, she did not make such complaint to any one at any time and it is only after the period of about 15 or 16 days from her termination she made a complaint application to education department saying that her signature was obtained on blank paper. So, naturally, it created doubt about her version.

15. There is another important piece of evidence which also to some extent suggests that plaintiff's version is not true. It has come on record that plaintiff had filed a suit claiming salary for the period 1.6.1976 to 31.7.1976. But subsequently, she withdrew the said suit without giving any reason. So, it can be said that she withdrew it because she was knowing that during the said period she was not in service. It must be noted that both the courts below have in fact given concurrent finding of fact that the plaintiff has failed to prove that the resignation dated 25.2.1975 was forged, so it cannot be said that the said concurrent finding of fact is perverse. So, there is in fact no substantial question of law involved in the matter.

16. Much is made about the fact that the

plaintiff was allowed to resume the duties from 1.8.1976 and she was continued for some months. According to the learned Advocate for the plaintiff, therefore she was taken on previous terms and conditions and that is why she was even paid salary which she was getting while her services were terminated. It is true that the defendant society has paid such salary to her. But, at the same time it is quite evident from the deposition of defendant's witness R.G.Patil, Dy. Director of Education Exhibit 139 that the defendant society took plaintiff as temporary servant. In fact she was accommodated in defendant society because of the request made by the Deputy Director of Education. There is no document to show that she was reinstated in service and her service was continued. So, in the absence of any such specific order, the courts below rightly held that plaintiff had not become permanent employee of the defendant society. Hence, I do not find any substance in the argument advanced by the learned advocate for the plaintiff in this behalf.

17. It has also come on record that the plaintiff gave up her claim regarding reinstatement.

So, considering this aspect also it is very clear that the plaintiff was in fact not interested in continuing with the defendant’s service.

18. In view of the above discussion, I have no hesitation to hold that there is no substance in this appeal. Hence, the appeal is dismissed with costs.

(S.R.Sathe, J.)